

109TH CONGRESS  
1ST SESSION

# H. R. 3580

To amend the Internal Revenue Code of 1986 to provide for a transferable credit against the income tax for producing energy from waste coal.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 28, 2005

Mr. MURPHY (for himself, Mr. MURTHA, Mr. PETERSON of Pennsylvania, Ms. HART, and Mr. ENGLISH of Pennsylvania) introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to provide for a transferable credit against the income tax for producing energy from waste coal.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Environmental Res-  
5 toration Act of 2005”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—Congress finds the following:

8 (1) Coal mining has been an important part of  
9 the industrial heritage of the United States for over

1       150 years. As coal is removed from underground  
2       mines, a large amount of other materials accom-  
3       panies the coal to the surface. This substance,  
4       known as gob, contains a mixture of clay, rocks, soil,  
5       minerals, and other raw materials. The gob piles  
6       contain millions of cubic feet of material known to  
7       contribute to acid mine drainage.

8               (2) The mountains of gob contain large  
9       amounts of potential energy that can be recycled to  
10      create new sources of power. The technology to use  
11      the gob pile materials as an efficient alternative en-  
12      ergy source has been developed over the past 15  
13      years. However, the incentive to invest in the tech-  
14      nology has not been pursued due to the high capital-  
15      ization and operating costs.

16              (3) Circulating Fluidized Bed (CFB) combus-  
17      tion is a clean coal technology that produces low  
18      emissions of sulfur dioxides, nitrogen oxides, particu-  
19      late matter, and mercury. CFB represents the best  
20      available control technology to burn waste coal and  
21      recover the energy stored therein. By using waste  
22      coal as the fuel source, the existing waste coal sites  
23      can be reclaimed, the mine drainage associated with  
24      these sites ameliorated, and the alkaline coal com-

1       bustion byproducts beneficially used in reclaiming  
2       the mine lands.

3           (4) Developing alternate energy sources reduces  
4       energy costs, reduces dependencies on foreign oil,  
5       and improves the competitiveness of American in-  
6       dustry. Increasing energy demands, and over reli-  
7       ance on limited sources of energy, will result in high-  
8       er prices for homeowners and industry. Higher pro-  
9       duction costs hurt American jobs, overburdens in-  
10      dustry, and stifles economic growth. The develop-  
11      ment of alternate energy sources will result in lower  
12      prices, a cleaner environment, new manufacturing,  
13      and more jobs.

14      (b) PURPOSE.—The purpose of this Act is to encour-  
15      age and create incentives for alternate fuel sources to meet  
16      the increasing demands of homeowners and industries  
17      while helping to keep the environment clean by utilizing  
18      waste coal efficiently.

19      **SEC. 3. ENERGY PRODUCED FROM WASTE COAL.**

20      (a) IN GENERAL.—Subpart D of part IV of sub-  
21      chapter A of chapter 1 of the Internal Revenue Code of  
22      1986 (relating to business related credits) is amended by  
23      inserting after section 45I the following new section:

1 **“SEC. 45J. ENERGY PRODUCED FROM WASTE COAL.**

2       “(a) GENERAL RULE.—For purposes of section 38,  
3 the waste coal energy production credit for any taxable  
4 year is an amount equal to \$0.75 per million Btu of heat  
5 input utilized by the taxpayer to produce energy in an eli-  
6 gible facility from qualified waste coal during the taxable  
7 year.

8       “(b) CREDIT REDUCED FOR GRANTS.—The amount  
9 of the credit determined under subsection (a) with respect  
10 to any project for any taxable year shall be reduced by  
11 the amount which is the product of the amount so deter-  
12 mined for such year and a fraction—

13               “(1) the numerator of which is the sum, for the  
14 taxable year and all prior taxable years, of—

15                       “(A) grants provided by the United States,  
16 a State, or a political subdivision of a State for  
17 use in connection with the project, and

18                       “(B) the amount of any other credit allow-  
19 able with respect to any property which is part  
20 of the project, and

21               “(2) the denominator of which is the aggregate  
22 amount of additions to the capital account for the  
23 project for the taxable year and all prior taxable  
24 years.

1 The amounts under the preceding sentence for any taxable  
2 year shall be determined as of the close of the taxable  
3 year.

4 “(c) QUALIFIED WASTE COAL.—

5 “(1) IN GENERAL.—For purposes of this sec-  
6 tion, the term ‘qualified waste coal’ means coal cer-  
7 tified by the Secretary to be waste (as defined in  
8 paragraphs (1) through (6) of section 292.202(b) of  
9 title 18, Code of Federal Regulations (as in effect on  
10 the date of the enactment of this section)).

11 “(2) CERTIFICATION PROCESS.—For purposes  
12 of paragraph (1), coal may not be certified as quali-  
13 fied waste coal unless application therefor is sub-  
14 mitted—

15 “(A) with respect to a facility placed in  
16 service prior to, or within 12 months after, the  
17 date of enactment of this section, not later than  
18 6 months after the date of such enactment, and

19 “(B) with respect to a facility placed in  
20 service at least 12 months after the date of the  
21 enactment of this section, at least 6 months  
22 prior to the anticipated commercial operation  
23 date of such facility.

24 “(d) ELIGIBLE FACILITY.—For purposes of this sec-  
25 tion—

1           “(1) IN GENERAL.—The term ‘eligible facility’  
2 means a facility—

3           “(A) whose heat input is not less than 75  
4 percent from qualified waste coal,

5           “(B) which, as of the date on which the  
6 Secretary determines by private letter ruling  
7 that the taxpayer is eligible for the allowance of  
8 the credit under this section, has under its con-  
9 trol, by ownership, lease, or contract—

10           “(i) with respect to a facility placed in  
11 service after the date of the enactment of  
12 this section, not less than a 15-year supply  
13 of qualified waste coal, or

14           “(ii) with respect to a facility placed  
15 in service prior to the date of the enact-  
16 ment of this section, not less than a 10-  
17 year supply of qualified waste coal, and

18           “(C) which—

19           “(i) is placed in service prior to, or  
20 within 12 months after, the date of the en-  
21 actment of this section, or

22           “(ii) is placed in service not more  
23 than 48 months after the month in which  
24 the taxpayer receives the private letter rul-  
25 ing referred to in subparagraph (B).

1           “(2) PRIVATE LETTER RULING.—For purposes  
2           of paragraph (1)(B), a private letter ruling shall not  
3           be taken into account unless the request for such  
4           ruling is submitted to the Secretary within 30 days  
5           after the date on which the supply of coal that the  
6           taxpayer has under its control is certified as quali-  
7           fied waste coal under subsection (c).

8           “(e) OTHER DEFINITION AND APPLICABLE  
9 RULES.—For purposes of this section—

10           “(1) HEAT CONTENT.—Heat content shall be  
11           determined on an ‘as received’ basis.

12           “(2) APPLICABLE RULES.—Rules similar to the  
13           rules of section 45(e) (other than paragraph (2))  
14           shall apply.

15           “(3) FORCE MAJEURE.—Performance time re-  
16           quirements specified in this section may be sus-  
17           pended by the Secretary for reasons beyond the con-  
18           trol of the taxpayer when the Secretary is so re-  
19           quested to extend deadlines by the taxpayer as long  
20           as the taxpayer makes such request within 72 hours  
21           of determining such event has occurred. Such events  
22           include acts of God and third party actions causing  
23           delay.

24           “(f) TERMINATION OF CREDIT.—

1           “(1) IN GENERAL.—No amount shall be allowed  
2           as a credit under subsection (a) with respect to an  
3           eligible facility for taxable years beginning after the  
4           expiration of the period determined under paragraph  
5           (1).

6           “(2) PERIOD OF APPLICABILITY.—The period  
7           determined under this paragraph is—

8                   “(A) with respect to a facility placed in  
9                   service not later than 5 years after the date of  
10                  the enactment of this section, the 10-year pe-  
11                  riod beginning on the date on which such facil-  
12                  ity receives certification that it is an eligible fa-  
13                  cility (as defined in subsection (d)), and

14                   “(B) with respect to a facility placed in  
15                   service more than 5 years after the date of en-  
16                   actment of this section, the period beginning on  
17                   the date on which such facility receives certifi-  
18                   cation that it is an eligible facility (as defined  
19                   in subsection (d)) and ending on the date that  
20                   is 15 years after the date of the enactment of  
21                   this section.

22           “(g) SPECIAL ANNUAL APPLICATION.—Notwith-  
23           standing any other provision of this title, no amount shall  
24           be allowed as a credit for a taxable year under subsection



1 (a) until after the taxpayer submits an application for  
2 such credit to the Secretary.

3 “(h) CREDIT MAY BE TRANSFERRED.—Nothing in  
4 any law or rule of law shall be construed to limit the trans-  
5 ferability of the credit allowed by this section through sale  
6 or repurchase agreements.”.

7 (b) CREDIT MADE PART OF GENERAL BUSINESS  
8 CREDIT.—Subsection (b) of section 38 of such Code (re-  
9 lating to current year business credit) is amended by strik-  
10 ing “plus” at the end of paragraph (18), by striking the  
11 period at the end of paragraph (19) and inserting “, plus”,  
12 and by adding at the end the following new paragraph:

13 “(20) the waste coal energy production credit  
14 determined under section 45J.”.

15 (c) DENIAL OF DOUBLE BENEFIT.—Section 280C of  
16 such Code (relating to certain expenses for which credits  
17 are allowable) is amended by adding at the end the fol-  
18 lowing new subsection:

19 “(e) WASTE COAL ENERGY PRODUCTION CREDIT.—  
20 No deduction shall be allowed for that portion of expenses  
21 incurred by the taxpayer to purchase qualified waste coal  
22 (excluding costs of transportation, handling, and prepara-  
23 tion that may be included in the purchase price) otherwise  
24 allowable as a deduction for the taxable year which is

1 equal to the amount of the credit determined for such tax-  
2 able year under section 45J.”.

3 (d) CLERICAL AMENDMENT.—The table of sections  
4 for subpart D of part IV of subchapter A of chapter 1  
5 of such Code is amended by inserting after the item relat-  
6 ing to section 45I the following new item:

“45J. Energy produced from waste coal.”.

7 (e) EFFECTIVE DATE.—The amendments made by  
8 this section shall apply to taxable years ending after De-  
9 cember 31, 2005.

10 **SEC. 4. TREATMENT OF WASTE COAL PROCESSING FACIL-**  
11 **ITY AS EXEMPT FACILITY BOND.**

12 (a) IN GENERAL.—Paragraph (6) of section 142(a)  
13 (relating to definition of exempt facility bond) is amended  
14 by striking “facilities,” and inserting “facilities, including  
15 waste coal processing facilities,”.

16 (b) EFFECTIVE DATE.—The amendments made by  
17 this section shall apply to bonds issued after December  
18 31, 2005.

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